
UNITED STATES DISTRICT COURT**EASTERN DISTRICT OF TEXAS**

MARVIN LEWAYNE MOODY, #28933-044 §

versus

UNITED STATES OF AMERICA

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CIVIL ACTION NO. 4:18-CV-82

CRIMINAL ACTION NO. 4:13-CR-248(4)

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation (#12) concluding that the Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody filed pursuant to 28 U.S.C. § 2255 should be denied and dismissed with prejudice. With the assistance of counsel, Movant filed objections (#13).

In Movant's objections, he reurges the ineffective assistance of counsel claims raised in the § 2255 motion. Despite his arguments, he fails to show that, but for his counsel's deficient performance, the outcome of the trial or appeal would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984). Furthermore, on direct appeal and in the instant collateral review, the evidence was determined to be sufficient to support Movant's convictions. Movant fails to show he is entitled to habeas relief.

Movant also asks for an evidentiary hearing, but evidentiary hearings are not required in federal habeas corpus proceedings. *See* Rule 8, *Rules Governing § 2255 Cases in the United States District Courts*; *see also McCoy v. Lynaugh*, 874 F.2d 954, 966-67 (5th Cir. 1989). Quite the contrary, "to receive a federal evidentiary hearing, a petitioner must allege facts that, if proved, would entitle him to relief." *Wilson v. Butler*, 825 F.2d 879, 880 (5th Cir. 1987), *cert. denied*, 484 U.S. 1079 (1988). "This requirement avoids wasting federal judicial resources on the trial of

frivolous habeas corpus claims.” *Id.* In this case, Movant fails to show that he is entitled to an evidentiary hearing.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Movant to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Movant’s objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** that Movant’s Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (#1) pursuant to 28 U.S.C. § 2255 is **DENIED**, and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions by either party not previously ruled upon are **DENIED**.

SIGNED at Beaumont, Texas, this 16th day of March, 2021.

A handwritten signature in black ink, reading "Marcia A. Crone", is positioned above a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE